Analysis of State Legislation Establishing Federal High Risk Pool

AB 1887 (Villines) Amended June 10, 2010
SB 227 (Alquist) Amended June 3, 2010

PURPOSE

AB 1887 and SB 227 are interrelated bills sponsored by Governor Schwarzenegger to establish a federal temporary high risk health insurance pool in California. The pool will provide coverage to medically uninsurable persons through December 31, 2013, consistent with the federal Patient Protection and Affordable Care Act (PPACA, Public Law 111-148) recently signed by President Obama. Each bill will be enacted only if the other bill is also enacted. The two bills will be referred to in this analysis as "the legislation."

AB 1887 would establish the Federal Temporary High Risk Health Insurance Fund to be continuously appropriated to the Managed Risk Medical Insurance Board (MRMIB) and provides associated amendments to the Bagley-Keene Open Meeting Act and the Public Records Act.

SB 227 would expressly provide the Board with the authority to enter into an agreement with the federal Department of Health and Human Services (DHHS) to create and administer a Federal Temporary High Risk Pool (FTHRP). This bill would require the Board to ensure that the amount spent for health coverage does not exceed the amount of federal funds available and that no state funds are spent.

SUMMARY

The legislation would provide MRMIB with the immediate authority to develop and administer California's federal temporary high risk health insurance pool. PPACA appropriated $5 billion nationwide for the federal temporary high risk health insurance pool. California's estimated share is $761 million over the life of the program. These federal funds are authorized to be spent as early as July 1, 2010, by DHHS or states entering into agreements with DHHS to operate the federal pool for DHHS. The authority granted within the legislation is similar to the authority with which MRMIB administers the Major Risk Medical Insurance Program (MRMIP). However, while state law establishes the parameters within which MRMIB may operate MRMIP, the parameters within which MRMIB may operate FTHRP would be set by federal law and the agreement between the state and DHHS.

RECOMMENDED POSITION: SUPPORT

MRMIB staff recommends the Board take a Support position on both AB 1887 and SB 227.

This legislation would give MRMIB the authority to use federal funds to expand coverage to tens of thousands more individuals than are able to be covered under

California's existing high risk pool, MRMIP. Such an expansion would advance MRMIB's mission and the Board's legislative principles regarding MRMIP.

Furthermore, in the current state budget climate, such an expansion would have been highly unlikely without federal funding.

Finally, MRMIB has administered California's high risk pool for 18 years; having MRMIB run the federal program as well would provide a better opportunity to coordinate communications with, and services for, applicants and subscribers than if the federal government were to operate one program and MRMIB another.

BACKGROUND

MRMIP Funding, Premiums and Enrollment

MRMIP is a high risk health insurance pool that provides access to comprehensive health insurance coverage for Californians who are unable to obtain coverage in the private individual market because they are considered to be medically uninsurable. MRMIP has been accepting subscribers since 1991. MRMIP subscribers pay monthly premiums at rates between 125 percent and 137.5 percent of the standard market rates for coverage from private health plans under contract with MRMIB. Subscriber premiums cover approximately 60 percent of the total cost of the program. The remaining 40 percent of the program's cost is subsidized by the state, primarily with Cigarette and Tobacco Surtax Fund (Proposition 99) funds.

State funding for the program has been about $40 million annually ($30 million in the MRMIP statute, $10 million through annual or one-time appropriations) in most years but has been reduced in recent years. Consequently, the annual MRMIP appropriation has been inadequate to fully fund the program and MRMIB has been forced to establish enrollment caps to ensure that expenditures do not exceed funding levels. Furthermore, in order to avoid even more restrictive enrollment caps and higher premiums, MRMIB adopted, by regulation, a $50,000 annual benefit limit and later increased the limit to $75,000. While fewer than one percent of subscribers reach the benefit limit each year, those who do are high-cost individuals who must bear the costs or liability for treatment themselves or forego needed health care. Nineteen percent of MRMIP subscribers make no medical claims at all and 80 percent have claims at or under $5,000 dollars annually, despite being a population of medically uninsurable individuals, as determined by health plans.

Subscriber premiums in MRMIP appear to be unaffordable for many uninsurable individuals. Annual disenrollment surveys of former MRMIP subscribers show that significant numbers disenroll because they cannot afford the monthly premium.

A total of 35 states, including California, currently administer high risk pools for medically uninsurable individuals. Accordingly to a July 2009 Governmental Accountability Office report, MRMIP is only the eighth largest state high risk pool in the

nation. According to that report, MRMIP covered fewer individuals than Colorado, Illinois, Maryland, Minnesota, Oregon, Texas, and Wisconsin.

The Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act into law. Section 1101 of PPACA requires the federal government to establish a temporary high risk health insurance pool program no later than 90 days after enactment and to operate the program through December 31, 2013, after which individual health insurers will no longer be allowed to reject applicants based on pre-existing conditions. PPACA specifically gave DHHS the authority to run the temporary high risk health insurance pool program or to contract with states or non-profits to provide coverage for high risk individuals. On April 2, 2010, Kathleen Sebelius, Secretary of Health and Human Services issued a letter to governors and state insurance commissioners inviting states to indicate interest in operating temporary high risk health insurance pool programs for DHHS.

On April 29, 2010, Governor Arnold Schwarzenegger sent a letter to Secretary Sebelius indicating California's intent to contract with the federal government to operate the temporary high risk health insurance pool program for currently uninsured individuals in California with pre-existing medical conditions. The Governor's letter indicated that MRMIB would operate the temporary high risk health insurance pool program alongside MRMIP. On May 10, 2010, DHHS released the solicitation for states proposing to establish the temporary federal high risk pool.

PPACA appropriated $5 billion of federal funds to operate the federal temporary high risk health insurance pool program, of which $761 million is estimated to be allocated to California. In contrast, MRMIP currently covers 6,923 individuals with $33 million in funding.

Each state has been provided with a specific dollar allocation; the allocation is applicable whether DHHS operates the pool in that state or contracts with the state or a nonprofit. The solicitation includes numerous provisions and requirements to monitor expenditures to protect a state from exceeding its federal allotment and to allow DHHS to determine if the state will spend the full allocation. For instance, the state is required to submit monthly reports concerning expenditures and the solicitation provides for frequent, ongoing claiming to DHHS. If the funding is insufficient to provide coverage to all those who qualify and desire coverage, PPACA permits DHHS to seek additional funds from Congress or cap enrollment.

Section 1101, the solicitation, and a recently-released model contract provide the requirements under which the federal temporary high risk health insurance pool programs may operate. There are some significant differences between the federal temporary high risk health insurance pool program requirements and MRMIP. Pursuant to PPACA, Applicants cannot have had "creditable coverage" within six months of application; "creditable coverage" encompasses most insurance and public programs, including coverage through state high risk pools such as MRMIP.

Consequently, MRMIP subscribers cannot move directly into the federal high risk pool unless they give up coverage for six months. This requirement of the federal law may cause some frustration because some individuals may prefer the coverage and premiums provided by the federal temporary high risk health insurance pool program to that in MRMIP, depending on their resources and needs. Key differences between the two pools include the following:

- Premiums in the federal temporary high risk health insurance pool program are required to be no more than 100 percent of the standard rate for the same product in the market. MRMIP premiums are between 125 percent and 137.5 percent.

- Although annual benefit limits are not explicitly prohibited by PPACA for state and federal high risk pool programs, DHHS is not proposing to contract with states to provide benefits that include annual limits. MRMIP currently limits benefits at $75,000 annually and $750,000 over a lifetime.

- Pre-existing condition exclusions are prohibited in the federal temporary high risk health insurance pool program. Consistent with state law, MRMIP currently excludes pre-existing condition coverage for three months under its preferred provider health plan, Anthem Blue Cross.

LEGISLATIVE HISTORY

AB 1971 (Chan, 2005-06), AB 2 (Dymally, 2007-08) and ABX1 3 (Dymally, 2007-08) would have supplemented MRMIP's capped appropriation with a monthly "per covered life" fee on specified carriers and would have enacted specific obligations for carriers not choosing to pay the fee. AB 1971 failed passage. AB 2 passed but was vetoed. AB X1 3 failed passage.

ANALYSIS

AB 1887 would do the following:

Federal Temporary High Risk Health Insurance Fund: AB 1887 would establish the Federal Temporary High Risk Health Insurance Fund to be continuously appropriated to MRMIB for operating the Federal Temporary High Risk Pool.

Administrative Powers: AB 1887 provides MRMIB with exemptions to the Bagley-Keene Open Meeting Act and the Public Records Act associated with contracting strategy in the new program. MRMIB currently enjoys similar exemptions in MRMIP, the Healthy Families Program, and Access for Infants and Mothers.

SB 227 would do the following:

Authorities: SB 227 creates the Federal Temporary High Risk Pool (FTHRP) and provides MRMIB with the authority that includes all of the following, to be exercised consistent with Section 1101 of PPACA and the agreement with DHHS:

- Enter into agreement with the federal department of Health and Human Services to administer the pool.
- Determine eligibility and enrollment criteria.
- Determine participation requirements of applicants, health plans, and other contractors.
- Determine the health coverage to be provided, including the benefits and cost-sharing, within the parameters provided under Section 1101 of PPACA.
- Contract with health plans and other contractors to provide health coverage.
- Obtain loans from the General Fund upon approval of the Department of Finance to administer the program. MRMIB shall repay loans with interest no later than January 1, 2014.
- Issue regulations to carry out all of the above.

Marketing and Outreach: SB 227 requires MRMIB to develop and implement a marketing and outreach plan.

Notification: SB 227 adds information about FTHRP to existing notices health plans and insurers must provide to applicants who are denied individual coverage or are offered coverage at a rate higher than the standard rate.

Federal Funding: SB 227 requires MRMIB to administer FTHRP to ensure the following:

- That the aggregate amount spent for high risk coverage and program administration does not exceed the federal funds available and that no state funds are spent. MRMIB must limit enrollment if sufficient funds are not available.

Appeal Provisions: SB 227 allows applicants or subscribers to appeal benefits and eligibility decisions.

Transition to Exchanges: Finally, SB 227 requires MRMIB to cease providing coverage by January 1, 2014, and, as required by DHHS, to implement procedures to provide

for the transition of subscribers into the health plan exchange or exchanges established by PPACA.

Discussion

Since its inception 18 years ago, MRMIP has been subject to a capped appropriation with reductions in recent years. This situation has required MRMIB to repeatedly lower enrollment from a high of more than 27,000 in 1999 to its current, capped level of 7,100 individuals. This represents a fraction of the state's medically uninsurable residents, estimated at 200,000 to 300,000.

This legislation would authorize MRMIB to administer the FTHRP program and provide coverage to many more uninsurable individuals with federal dollars and without any additional cost to the state. By doing so, MRMIB would be furthering its mission and stated principles. In considering whether or not to support legislation effecting MRMIP, at the March 22, 2006, public meeting, the MRMIB Board adopted the following specific principles to guide the Board in evaluating legislation affecting MRMIP:

- Enrollment in coverage for high risk persons should be available to all willing to purchase it.
- The structure of coverage for medically uninsured persons should not provide health plans with a disincentive to participate in the purchasing pool.
- The structure of benefits should be compatible with the medical needs of the population. It should not provide a disincentive for utilizing needed health care.
- The program should be structured and administered in a way to encourage and promote consumer choice of health plans.
- Coverage should be affordable.
- There should be some mechanism to ensure that the diverse population of California is aware of the availability of coverage for medically uninsured persons.

While the Board adopted these principles in reference to MRMIP, MRMIB's implementation of the federal pool would advance several of the principles:

- Affordability: Premiums, while not yet known, would be based on market rates for the same coverage rather than, as in MRMIP, higher than market rates.
- Availability of coverage: The infusion of federal funds permits MRMIB to cover tens of thousands of additional individuals.
- Structure of benefits compatible with medical needs of the population: As discussed above, coverage will not include annual benefit limits.
- Public awareness: The legislation requires that MRMIB develop and implement a marketing and outreach plan.

Finally, as stated above, MRMIB has administered California's high risk pool for 18 years; legislation directing MRMIB to run the federal program as well would provide a better opportunity to coordinate communications with, and services for, applicants and

subscribers than if the federal government were to operate one program and MRMIB another.

FISCAL IMPACT

PPACA appropriated $5 billion in federal funds to operate the federal temporary high risk health insurance pool program; CMS has indicated that approximately $761 million is to be allocated to California. These funds are authorized to be spent as early as July 1, 2010.

The legislation requires that FTHRP will only be operated with federal funds and that MRMIB limit enrollment in the event that funds are insufficient.

Administrative Costs

The solicitation issued by the federal Department of Health and Human Services indicates that administrative costs should be limited to 10 percent of claims.

PRO / CON ARGUMENTS

Pro

- The legislation will authorize MRMIB to cover tens of thousands of currently uninsurable Californians.
- The legislation is consistent with MRMIB's mission and adopted principles.
- The legislation will require that no state funds are used by MRMIB to expand coverage.
- The legislation will authorize MRMIB to provide a new product that may better fit the needs of certain uninsurable individuals.
- The legislation permits a better opportunity to coordinate communications and services than if the federal government were to operate one program and MRMIB another.

Con

None noted.

CONCLUSION

This legislation allows MRMIB to tap a new funding source to substantially increase the number of medically uninsurable Californians who could purchase coverage. As a result, the legislation authorizes MRMIB to provide the new FTHRP program that would meet the Board's mission and guiding principles. MRMIB staff recommends the Board take a Support position on both AB 1887 and SB 227.

SUPPORT/OPPOSITION

AB 1887

Support	**Opposition**
Governor Schwarzenegger (Sponsor)	No known opposition
California Association of Health Plans	
California Hospital Association	
California Medical Association	
California Hepatitis C Task Force	
Asthma & Allergy Foundation of America	
TMJ Society of California	
California Chronic Care Association	

SB 227

Support	**Opposition**
Governor Schwarzenegger (Sponsor)	No known opposition
AARP	
Consumer's Union	
California Association of Health Plans	
California Medical Association	
California Hepatitis C Task Force	
Asthma & Allergy Foundation of America	
TMJ Society of California	
California Chronic Care Association	

VOTES

AB 1887

Date	**Location**	**Vote**	**Result**
6/14/10	Asm. Floor	(Yes: 72 No: 0 Abstain: 8)	Pass

SB 227

Date	**Location**	**Vote**	**Result**
6/15/10	Asm. Health	(Yes: 18 No: 0 Abstain: 0)	Pass